IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 17461 of 2006(D)

PETITIONER:
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1. THE MANAGER,
V.M,H.S. VADAVANNUR P.O.
PALAKKAD.

2. ANURAG A.N.
AZHICHIRA HOUSE,
MUTHALALA POST, KOLLAMKODE,
PALAKKAD.

BY ADV. SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF PUBLIC INSTRUCTION,
TRIVANDRUM.

3. DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.

4. DISTRICT EDUCATION OFFICER,
PALAKKAD.

BY GOVERNMENT PLEADER SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE APPOINTMENT ORDER DTD. 5-6-02**
EXT.P2	**TRUE COPY OF THE PROCEEDINGS OF THE FOURTH RESPONDENT.**
EXT.P3	**TRUE COPY OF THE ORDER OF THE FOURTH RESPONDENT DTD. 7-10-02**
EXT.P4	**TRUE COPY OF THE ORDER OF THE THIRD RESPONDENT DTD. 4-2-04**
EXT.P5	**TRUE COPY OF G.O.(MS)317/01/GENERAL EDUCATION DTD. 24-10-01**
EXT.P6	**TRUE COPY OF G.O.NO.237/2000/GENERAL EDUCATION DTD.15-7-2000**
EXT.P7	**TRUE COPY OF THE JUDGMENT OF THIS COURT IN W.P.C.NO.7455/04**
EXT.P8	**TRUE COPY OF THE REVISION PETITION AGAINST EXT.P4 TO R2**
EXT.P9	**TRUE COPY OF THE ORDER OF THE SECOND RESPONDENT DTD. 28-9-04**
EXT.P10	**TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT DTD. 31-5-05**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.17461 OF 2006

Dated this the 10th day of April, 2007

JUDGMENT

Second petitioner was appointed as H.S.A. (Malayalam) on 05/06/2002. Approval of the appointment came to be rejected by Ext.P3 by the DEO. The reason stated is that the proposal has been received in the office only on 17/09/2002. The Deputy Director by Ext.P4 order rejected the appeal filed against Ext.P3 stating as follows:

> " The case is examined in detail in consultation with the DEO, Palakkad and the DEO in the letter under reference (2) cited has reported that there is no sanctioned post as per GO(MS)317/01 dated 24-10-01 to accommodate the appointee and being a newly opened school, the post was to be filled up by protected teacher. On perusal of the connected records the above facts are found genuine and hence the appeal is rejected."

2. The matter was further carried in revision under Rule 8(a) as evident from Ext.P8. By Ext.P9 the DPI has confirmed the order stating that there is no sanctioned post to accommodate the appointee as per GO(MS)No.317/01 dated 24-10-2001 and the school is a newly opened school, all the vacancies of language and special teachers should be filled up by absorbing protected teachers. Ext.P10 is the order apparently passed by the Government purportedly on the petition filed by the manager.

3. Counter affidavit is filed. Petitioners challenge Exts.P3, P4, P9 and P10 and seeks a direction for approval with effect from 05/06/2002. The stand of the Government is that the second petitioner having been appointed on 05/06/2002, there was no sanctioned post in the year 2002-03 as evident from the staff fixation order to accommodate the second petitioner. Second petitioner ought to have challenged the staff fixation order, it is submitted.

4. The main contention of the petitioners is based on

Exts.P5 and P6. Exts.P5 and P6 are executive orders as per which amendment to the statutory rule is contemplated. But it is not in dispute that the statutory rule as such was amended only by GO(P) dated 19/03/2005 and it has no retrospective effect so as to operate on the state of affairs prevailing in the year 2002.

5. I heard learned counsel for the petitioners and the learned Government Pleader also.

6. Learned counsel for the petitioners submits that both the reasons stated in Ext.P9 order are unsustainable. He would submit that as far as the reference made to Ext.P6, it cannot be held good in the light of Ext.P7 judgment of this court. I find merit in the contention of the petitioners in this regard. In view of Et.P7 judgment the reasons stated relying on Ext.P6 is unsustainable as it is the admitted case that the amendment to the rule came into effect in the year 2005. Therefore that reason cannot be sustained. The next reason given is that the school is bound to absorb protected teacher. Petitioner has a case that there were no protected teachers available. Learned counsel for the petitioners points out that the

allegation is not denied in the counter affidavit also.

Learned Government Pleader points out that petitioners have to work out their remedies against the staff fixation orders for the concerned year. I see merit in the said contention also.

In such circumstances, the writ petition is disposed of as follows:

If the petitioners ventilate their grievances against staff fixation orders for the relevant years, the matter will be considered in the light of the observations contained in this judgment. It is made clear that approval of the second petitioner shall not be denied relying on Ext.P6 order and the matter in the said regard for the said year shall be governed by Ext.P7 judgment. As regards the question relating to absorption of protected teacher is concerned, I leave open the contentions of the petitioners in this regard.

K.M.JOSEPH
JUDGE

sv.